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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,473	08/27/2003	Hiroaki Ito	030855	5736

23850 7590 11/03/2006

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EXAMINER

HOOK, JAMES F

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/648,473

Applicant(s)

ITO ET AL.

Examiner

James F. Hook

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/5/06, 4/24/06, and 8/7/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

It is noted that applicant has argued that the prior art references to Katayama (565 and 185) are commonly assigned and therefore are not available as prior art references against the instant application. It appreciated all the materials that were filed to confirm that the translation of the priority document of the instant application was directed to the same inventive entity as the instant application thereby perfecting priority. However, applicant is arguing the references are commonly assigned with the instant application but has not set forth the proper language or method to establish this fact as of yet. See MPEP section 706.02 (I) which sets forth the manner in which common assignment can be set forth. Due to the fact that a statement does not exist yet that the references and the instant application were commonly assigned at the time of filing as required in the MPEP section above, the rejection will be kept below as such has not yet been officially overcome. The examiner apologizes for not bringing this point up sooner, however, in the discussion that ensued trying to clarify the proper inventive entity the examiner lost sight of the fact that applicant was arguing common assignment, and had not met the requirements yet to clearly set this forth.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katayama (565) in view of Katayama (185). The 565 patent discloses the recited automotive fuel hose comprising an inner tubular layer 1 formed of a fluoro resin such as ETFE which can be treated with an epoxy group to provide a functional group, and an outer layer which can be formed of a low fuel permeability layer such as a polyester resin such as polybutylene terephthalate (PBT). The 565 patent discloses all of the recited structure with the exception of using a polyester with a naphthalene ring such as polybutylene naphthalate (PBN). The 185 patent discloses that in fuel hose layers when PBT is used for a layer PBN is also an equivalent material to use in place of PBT. It would have been obvious to one skilled in the art to modify the outer PBT layer in the 565 patent by substituting PBN for the PBT in the layer as suggested by the 185 patent where such is a known equivalent material used in place of PBN as such is an equivalent substitute material and would provide different resistance based upon the material used and would thereby increase the materials in which the hose can be subject to based upon environment.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishi (551) in view of Smith (871). The Nishi patent discloses the recited automotive fuel hose comprising an inner tubular layer A formed of a fluoro resin such as ETFE which can be treated with an epoxy group or other groups to provide a functional group, and an outer layer which can be formed of a low fuel permeability layer such as a polyester resin such as polybutylene terephthalate (PBT). The Nishi patent discloses all of the recited structure with the exception of using a polyester with a naphthalene ring such as

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polybutylene naphthalate (PBN). The Smith patent discloses that in fuel hose layers when PBT is used for a layer PBN is also an equivalent material to use in place of PBT. It would have been obvious to one skilled in the art to modify the outer PBT layer in the Nishi patent by substituting PBN for the PBT in the layer as suggested by the Smith patent where such is a known equivalent material used in place of PBN as such is an equivalent substitute material and would provide different resistance based upon the material used and would thereby increase the materials in which the hose can be subject to based upon environment. The materials having the same make up would inherently have the same properties as applicants, when there is no claim language to modifying the resins to meet specific strength requirements, therefore the references teaching the same materials would inherently have the same strength properties.

Response to Arguments

Applicant's arguments filed January 5, 2006 have been fully considered but they are not persuasive. The argument is that the prior art references to Katayama (565 and 185) are commonly assigned and therefore are not available as prior art references against the instant application. As set forth above, such has not been established that they were commonly owned at the time of filing as required by the MPEP section set forth above.

Conclusion

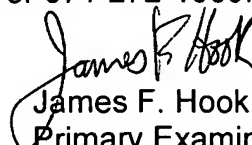
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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references to Suzuki, Pfleger, and Nishino disclosing state of the art tubes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


James F. Hook
Primary Examiner
Art Unit 3754

JFH